IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. CHARLES LEE SCHRAGE, Defendant.	No. CR 07-3033-MWB **INSTRUCTIONS TO THE JURY**

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INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, I am giving you these Instructions to help you better understand the trial and your role in it. Consider these instructions, together with all written and oral instructions that I may give you during or at the end of the trial, and apply them as a whole to the facts of the case.

As I explained during jury selection, in an Indictment, a Grand Jury charges defendant Charles Lee Schrage with an offense that I will call "felon in possession of a firearm." As I also explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. The defendant has pled not guilty to the crime charged against him, and he is presumed to be innocent of that offense unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

Your duty is to decide from the evidence whether the defendant is not guilty or guilty of the charge against him. You will find the facts from the evidence. You are the sole judges of the facts, but you must follow the law as stated in these instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law in these instructions. Do not take anything that I have said or done during jury selection or that I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. Similarly, do not conclude from any ruling or other comment that I have made or may make that I have any opinions on how you should decide the case.

Please remember that only defendant Charles Lee Schrage, not anyone else, is on trial here. Also, remember that this defendant is on trial *only* for the offense charged against him in the Indictment, not for anything else. The defendant is also entitled to have the charge against him considered solely on basis of the evidence presented in court.

You must return a unanimous verdict on the charge against the defendant.

INSTRUCTION NO. 2 - PRELIMINARY MATTERS

Before I turn to specific instructions on the "felon in possession of a firearm" offense charged in this case, I must explain some preliminary matters.

"Elements"

The offense charged in this case consists of "elements," which the prosecution must prove beyond a reasonable doubt against the defendant in order to convict him of that offense. I will summarize in the following instructions the elements of the "felon in possession of a firearm" offense with which the defendant is charged.

Timing

The Indictment alleges that the offense was committed "on or about" June 27, 2006. The prosecution does not have to prove with certainty the exact date of the offense charged. It is sufficient if the prosecution's evidence establishes that the offense occurred within a reasonable time of the date alleged for the offense in the Indictment.

"Knowledge"

The elements of the charged offense may require proof of what the defendant "knew." Where what the defendant "knew" is an element of an offense, the defendant's "knowledge" must be proved beyond a reasonable doubt. "Knowledge" is a mental state. It is seldom, if ever, possible to determine directly the operations of the human mind. Nevertheless, "knowledge" may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence.

An act was done "knowingly" if the defendant was aware of the act and did not act through ignorance, mistake, or accident. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful.

"Possession"

The offense charged in this case allegedly involved "possession" of one or more firearms or ammunition. The following definition of "possession" applies in these instructions:

The law recognizes several kinds of "possession." A person was in "actual possession" of an item if the person knowingly had direct physical control over that item at a given time. A person was in "constructive possession" of an item, even if the person did not have direct physical control over that item, if the person knew of the presence of the item and had control over the place where the item was located or had control or ownership of the item itself. Thus, mere presence of a person where an item is found or mere proximity of a person to the item is insufficient to establish a person's "possession" of that item. The person must know of the presence of the item at the same time that he or she has control over the item or the place where it was found. "Constructive possession" can be established by a showing that the item was seized at the person's residence or from the person's vehicle, if the person knew of the presence of the item at the residence or in the vehicle. On the other hand, a person's mere presence as a passenger in a vehicle from which the police recovered the item does not establish that person's constructive possession of the item. If one person alone had actual or constructive

possession of an item, possession was "sole." If two or more persons shared actual or constructive possession of an item, possession was "joint."

Whenever the word "possession" is used in these instructions, it includes "actual" as well as "constructive" possession and also "sole" as well as "joint" possession.

* * *

I will now give you more specific instructions about the offense charged in the Indictment.

INSTRUCTION NO. 3 - CHARGED OFFENSE: FELON IN POSSESSION OF A FIREARM

The Indictment charges the defendant with a "felon in possession of a firearm" offense allegedly involving his possession of five firearms and various rounds of ammunition. Mr. Schrage denies that he committed this "felon in possession of a firearm" offense.

For you to find the defendant guilty of the charged offense, the prosecution must prove *all* of the following essential elements beyond a reasonable doubt as to that offense:

***One*, prior to June 27, 2006, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year.**

> The prosecution and the defendant have stipulated, that is, they have agreed, that, prior to June 27, 2006, defendant Schrage had been convicted of one or more crimes punishable by imprisonment for more than one year under the law of the State in which each offense was committed. Therefore, you must consider this element to be proved.

***Two*, on or about June 27, 2006, the defendant knowingly possessed one or more of the firearms charged in the Indictment.**

> The Indictment charges that defendant Schrage knowingly possessed one or more of the following firearms and ammunition: (1) a Winchester Model 88, .243 caliber lever action rifle with serial number H254499; (2) a Remington Model 1100, 12-gauge shotgun with serial number M114860M; (3) a Harrington and

Richardson Model SB2 Ultra, .223 caliber single shot rifle with serial number HG325500; (4) a Ruger M77, .22 x 250 caliber rifle with serial number 73-19955; (5) a High Standard, .22 caliber revolver with serial number 001925 (W-106); and (6) various rounds of ammunition. You must determine whether the defendant "knowingly possessed" one or more of the firearms or rounds of ammunition alleged in the Indictment. "Knowledge" and "possession" were both defined for you in Instruction No. 2. The prosecution does not have to prove that the defendant knew that it was illegal for him to possess a firearm or ammunition, nor does the prosecution have to prove who "owned" the firearm or ammunition, because the law prohibits "possession" of a firearm or ammunition by a felon. The prosecution also does not have to prove that the defendant possessed all of the firearms and all of the rounds of ammunition alleged in the Indictment. Rather, the prosecution must prove that the defendant possessed at least one of the firearms or at least one round of the ammunition alleged or a combination of firearms and rounds of ammunition.

***Three*, at some time before the defendant possessed a firearm or ammunition on June 27, 2006, that firearm or ammunition was transported across a state line.**

The prosecution and the defendant have stipulated that the firearms and ammunition in question were transported across a state line at some time before the defendant possessed them, if he did, indeed, possess any firearm or ammunition. Therefore, you must consider this element to be proved.

If the prosecution fails to prove these elements beyond a reasonable doubt as to the "felon in possession of a firearm" offense, then you must find the defendant not guilty of that offense.

INSTRUCTION NO. 4 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the defendant's arrest or charge or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to the charged offense only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of that offense against the defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. The burden never shifts to the defendant to prove his innocence. Therefore, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution. Similarly, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of the offense charged against him, you must find him not guilty of that offense.

INSTRUCTION NO. 5 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that the defendant never has the burden or duty of calling any witnesses or producing any evidence. A reasonable doubt may also arise from the prosecution's lack of evidence. A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. On the other hand, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 6 - DEFINITION OF EVIDENCE

Your verdict must be based only on the evidence presented in this case and these and any other instructions that may be given to you during the trial. Evidence is:

1. Testimony.
2. Exhibits that are admitted into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be "direct" or "circumstantial." The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony that I tell you to disregard.
4. Anything that you see or hear about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the

weight of the evidence is not determined merely by the number or volume of documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict the witness's testimony. Also, you are free to disbelieve the testimony of any or all witnesses. The quality and weight of the evidence are for you to decide.

INSTRUCTION NO. 7 - CREDIBILITY AND IMPEACHMENT

In deciding what the facts are, you will have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider each witness's intelligence, the opportunity the witness had to see or hear the things the witness testifies about, the witness's memory, any motives the witness may have for testifying a certain way, the manner of the witness while testifying, whether the witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the witness's testimony, and the extent to which the witness's testimony is consistent or inconsistent with any other evidence. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If the defendant testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters

in that field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, any reason that the expert may be biased, and all of the other evidence in the case.

A person who is not an expert may also give an opinion, if that opinion is not based on scientific, technical, or other specialized knowledge, but is rationally based on the witness's perception. You may give an opinion of a non-expert witness whatever weight you think such an opinion deserves, based on the reasons and perceptions on which the opinion is based, any reason that the witness may be biased, and all of the other evidence in the case.

Just because a witness works in law enforcement or is employed by the government does not mean you should give any more or less weight or credence to that witness's testimony than you give to any other witness's testimony.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness are admitted into evidence, they will not be admitted to prove that the contents of those statements are true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or

inconsistent with the trial testimony of the witness and, therefore, whether they affect the credibility of that witness.

You may hear evidence that a defendant has previously been convicted of one or more crimes. You may use that evidence only to help you decide whether to believe that defendant's testimony and how much weight to give it. That evidence does not mean that the defendant committed the crime charged here, and you must not use that evidence as proof of the crime charged in this case. However, if you find beyond a reasonable doubt that a defendant carried out the acts involved in the offense charged in this case, then you may consider evidence that the defendant has previously been convicted of a similar offense to help you determine that defendant's motive, knowledge, or intent in committing the acts involved in the offense charged here. You cannot, however, convict a person of an offense charged in this case simply because he or she may have committed a similar offense in the past.

You may hear evidence that certain witnesses have each been convicted of a crime. You may use that evidence only to help you decide whether or not to believe these witnesses and how much weight to give their testimony.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

INSTRUCTION NO. 8 - BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, the lawyers and I will be working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 9 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

INSTRUCTION NO. 10 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

INSTRUCTION NO. 11 - CONDUCT OF THE JURY DURING TRIAL

You must decide this case based ***solely*** on the evidence presented in court, in light of your own observations, experiences, reason, common sense, and the law as I have explained it in these Instructions. Therefore, to ensure fairness, you, as jurors, must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case or about anyone involved with it until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it, or about any news story, rumor, or gossip about this case, or ask you about your participation in this case until the trial has ended and I have accepted your verdict. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial, you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you

when you pass in the hall, ride the elevator or the like, it is because he or she is not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it, or let anyone tell you anything about any such news reports. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Do not discuss this case with anyone, not even with other jurors, until I send you to the jury room for deliberations after closing arguments. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to me. I want you to be comfortable, so please do not hesitate to inform him of any problem.

I will reserve the remaining Instructions until the end of the trial.

INSTRUCTION NO. 12 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. *Your verdict on the charge against the defendant must be unanimous*. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so consistent with your individual judgment. You must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced that it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on the offense charged against him, then he should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. The opposite also applies for you to find the defendant guilty. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of the offense charged against the

defendant, and if the prosecution fails to do so, then you cannot find him guilty of that offense.

Remember, also, that the question before you can never be whether the prosecution wins or loses the case. The prosecution, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you were. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

INSTRUCTION NO. 13 - DUTY DURING DELIBERATIONS

There are certain rules that you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, if the defendant is guilty of the charged offense, then the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case against him beyond a reasonable doubt.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically*.

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. You must return a unanimous verdict on the charge against the defendant. Nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.

Fifth, in your consideration of whether the defendant is not guilty or guilty of the offense charged against him, you must not consider his race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the

defendant on the charged offense unless you would return the same verdict on that charge without regard to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your decision.

Finally, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. You will take the verdict form to the jury room. *Again, you must return a unanimous verdict on the charge against the defendant*. When you have reached a unanimous verdict, your foreperson must complete one copy of the verdict form and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 6th day of October, 2008.

Mark W. Bennett

MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. CHARLES LEE SCHRAGE, Defendant.	No. CR 07-3033-MWB **VERDICT FORM**

As to defendant Charles Lee Schrage, we, the Jury, unanimously find as follows:

FELON IN POSSESSION OF A FIREARM		**VERDICT**
Step 1: Verdict	On the "felon in possession of a firearm" offense, as charged in the Indictment and explained in Instruction No. 3, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: Firearm(s) and/or Ammunition in Question	*If you found the defendant guilty of this offense*, please indicate which one or more of the following firearms and/or ammunition the defendant possessed.	
	___ (1) a Winchester Model 88, .243 caliber lever action rifle with serial number H254499	
	___ (2) a Remington Model 1100, 12-gauge shotgun with serial number M114860M	
	___ (3) a Harrington and Richardson Model SB2 Ultra, .223 caliber single shot rifle with serial number HG325500	

	___ (4) a Ruger M77, .22 x 250 caliber rifle with serial number 73-19955
	___ (5) a High Standard, .22 caliber revolver with serial number 001925 (W-106)
	___ (6) one or more rounds of ammunition
CERTIFICATION	
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the race, color, religious beliefs, national origin, or sex of the defendant.	

_____
Date

_____ _____
Foreperson Juror

_____ _____
Juror Juror

_____ _____
Juror Juror

_____ _____
Juror Juror

_____ _____
Juror Juror

_____ _____
Juror Juror